



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: 401 Jefferson Drive, S.W.
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,237	07/06/2001	Stephen M. Allen	BB1170 USCIP	4901

23906 7590 09/27/2002

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

BUI, PHUONG T

ART UNIT	PAPER NUMBER
1638	

DATE MAILED: 09/27/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/900,237	Application(s) Allen	Examiner Phuong Bui	Art Unit 1638
				
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.				
<ul style="list-style-type: none"> - Extension of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 				
Status				
1) <input type="checkbox"/> Responsive to communication(s) filed on _____				
2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.				
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.				
Disposition of Claims				
4) <input checked="" type="checkbox"/> Claim(s) <u>1-22</u> is/are pending in the application.				
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.				
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.				
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.				
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.				
8) <input checked="" type="checkbox"/> Claims <u>1-22</u> are subject to restriction and/or election requirement.				
Application Papers				
9) <input type="checkbox"/> The specification is objected to by the Examiner.				
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are <input type="checkbox"/> accepted or <input checked="" type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).				
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: <input type="checkbox"/> approved <input checked="" type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.				
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.				
Priority under 35 U.S.C. §§ 119 and 120				
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).				
a) <input type="checkbox"/> All <input type="checkbox"/> Some* <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.				
14) <input checked="" type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.				
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.				
Attachment(s)				
1) <input type="checkbox"/> Notice of References Cited (PTO-892)				
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)				
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____				
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____				
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)				
6) <input type="checkbox"/> Other: _____				

Art Unit: 1638

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to an isolated polynucleotide, chimeric gene, host cell, plant, seed and methods of making, classified in class 536, subclass 23.6.
 - II. Claims 17-21, drawn to cellulose synthase polypeptides, classified in class 530, subclass 372.
 - III. Claim 22, drawn to a method for evaluating the ability of a compound to inhibit the activity of a cellulose synthase polypeptide, classified in Class 435, subclass 183.

For each of inventions I-III above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of inventions I-III and one of inventions (A)-(D).

- (A). SEQ ID No: 23 or a sequence encoding SEQ ID No: 24.
- (B). SEQ ID No: 25 or a sequence encoding SEQ ID No: 26.
- (C). SEQ ID No: 27 or a sequence encoding SEQ ID No: 28.
- (D). SEQ ID No: 29 or a sequence encoding SEQ ID No: 30.

The inventions are distinct, each from the other because of the following reasons:

Art Unit: 1638

2. Inventions (A)-(D) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions, represent structurally different polypeptides and the polynucleotides encoding them. Therefore, where structural identity is required, such as for hybridization or expression, the different sequences have different effects.

3. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to divergent molecules having different functions and effects. The polynucleotides can be used in hybridization assays as well as in expression methods for producing the polypeptides. The polypeptides function as cellulose synthase polypeptides.

4. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the polynucleotide can be used in a materially different process such as one in which the polynucleotide is used to transform a bacterial host cell for heterologous expression of the polypeptide.

Art Unit: 1638

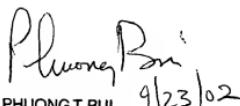
5. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the literature and sequence searches required for each of the Groups are not required for another of the Groups, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Bui whose telephone number is (703) 305-1996.

Phuong Bui
Primary Examiner
Group Art Unit 1638
September 23, 2002


PHUONG T. BUI
PRIMARY EXAMINER
9/23/02